

## CHAPTER 6 MINORITY BUSINESS DEVELOPMENT

## Secs.

|     |   |
|-----|---|
| 600 | General Provisions                                  |
| 601 | General Program Policy                              |
| 602 | Sheltered Market Program: Goals and Establishment   |
| 603 | Commission Review and Approval of Programs          |
| 604 | Sheltered Market Program Implementation             |
| 605 | Sheltered Market Contracts: Priority Considerations |
| 606 | Sheltered Market Subcontracts                       |
| 607 | Commission Oversight of Program Implementation      |
| 608 | Bonding   |
| 699 | Definitions   |

### 600 GENERAL PROVISIONS

- 600.1 The Minority Business Opportunity Commission shall establish and implement programs to encourage and increase the participation of local minority business enterprises in contract procurement by the government of the District of Columbia and to improve minority business opportunities generally in the District of Columbia.
- 600.2 The Commission shall promulgate rules and regulations in order to accomplish the goals of the Act and implement the various programs established under the authority of the "Minority Contracting Act of 1976."
- 600.3 The operations of the Commission shall be conducted in accordance with the provisions of the Act and chapters 6 and 7 of this title.
- 600.4 The Commission shall hold a regular meeting on the first Tuesday of each month at 2:00 p.m. at a place to be set by the Commission. In the event that the Commission fails to meet on the scheduled regular meeting date, a meeting shall be scheduled one (1) week later.
- 600.5 Meetings of the Commission shall be open to the public; Provided, that the Commission may meet in executive session to discuss information which is privileged by law.
- 600.6 Applicants wishing to make an appearance at a Commission meeting shall give written notice to the Commission at least five (5) days before the meeting at which they appear.
- 600.7 The official records of the proceedings and actions of the Commission shall be maintained by the Staff Director.

600.8 The Staff Director shall send written notice of each Commission meeting to each Commission member at least one (1) week in advance of each meeting. The notice shall include the agenda of the meeting and a copy of the minutes of the previous meeting.

600.9 The rules of evidence shall not apply to the proceedings of the Commission; however, the Commission may exclude irrelevant or repetitive testimony or evidence.

**AUTHORITY:** Unless otherwise noted, the authority for this chapter is §5(a) of the Minority Contracting Act, D.C. Law 1-95, D.C. Code §1-1144(a) (1981).

**SOURCE:** Final Rulemaking published at 26 DCR 2771, 2772 (December 21, 1979).

## **601 GENERAL PROGRAM POLICY**

601.1 The Commission shall implement a sheltered market program in accordance with the provisions of the Act and chapters 6 and 7 of this title.

601.2 While it is the general policy of the Commission to encourage minority participation in contracting through the regular advertisement and bidding process, the Commission may take either of the following actions in specific instances:

(a) Require that the advertisement of selected contracts for construction, supplies, or services be limited to categories of contractors; or

(b) Authorize the letting of selected contracts by negotiation.

601.3 Acting pursuant to a written request from a certified contractor, the Commission may recommend that any of the following actions be taken by an agency:

(a) Advance, partial, progress, or other types of payments to contractors under contracts for property or services; Provided, that the payments shall not exceed the unpaid contract price, shall be based upon a finding by the agency head that they will be in the public interest, and shall be secured in accordance with the provisions of sec. 12(c) of the Act; or

(b) Waiver of bonding requirements where the waiver shall maintain the integrity of the District's procurement program.

601.4 A Commission recommendation on any of the actions set forth in §601.3 shall not be required prior to agency action. An agency may request the recommendation of the Commission prior to initiating any such action.

601.5 The Commission may, from time to time, review minority contracting problems and make recommendations for the improvement of minority business development in the District of Columbia in accordance with the provisions of the Act.

601.6 The Commission may make specific recommendations with respect to particular contracts. In making these recommendations, the Commission shall consider the following factors:

(a) Emergency or other unusual circumstances;



- (b) The location of the contractor or other entity;
- (c) Possible tax benefits to the District of Columbia;
- (d) The potential for enhancing the position of minority business in a particular market or industry;
- (e) The potential for encouraging entrepreneurship among residents of the District of Columbia; and
- (f) Other factors affecting the public interest and the promotion of minority business in the District of Columbia.

SOURCE: Final Rulemaking published at 26 DCR 2771, 2772 (December 21, 1979).

## **602 SHELTERED MARKET PROGRAM: GOALS AND ESTABLISHMENT**

- 602.1 Each agency of the District government shall be required to establish an annual program for minority procurement in accordance with the provisions of the Act and chapters 6 and 7 of this title.
- 602.2 Agency programs established pursuant to this section shall be submitted to the Commission annually for review and approval. The Commission shall provide forms for submission of annual sheltered market procurement programs.
- 602.3 In establishing its annual program, each agency shall allocate its contracting and procurement to meet the following goals:
  - (a) Placement of thirty-five per cent (35%) of the total dollar amount of construction contracts in the sheltered market; and
  - (b) Placement of thirty-five per cent (35%) of procurement of goods and services in the sheltered market.
- 602.4 Annual programs shall be established on a fiscal year basis. Agencies shall submit proposed programs to the Commission at least sixty (60) days before the beginning of the fiscal year. Modifications to the program based on the actual fiscal year budget apportionment shall be submitted to the Commission within thirty (30) days of the receipt of the final apportionment by the agency.
- 602.5 Agency sheltered market programs may include any of the following types of placements:
  - (a) Direct placement of contracts with certified MBE's;
  - (b) Direct placement of contracts with joint ventures certified under §701; or
  - (c) Indirect placement of contracts by requiring a portion of the subcontracts let under an open market contract to be let to certified MBE subcontractors in accordance with the requirements of §604.
- 602.6 Agency programs shall clearly indicate the manner in which the agency plans to reach the goals set forth in this section.

602.7 Agency programs shall specifically indicate the following:

- (a) The total dollar amount of construction contracts to be let by the agency during the fiscal year;
- (b) The total dollar amount of goods and services to be procured by the agency during the fiscal year;
- (c) The construction contracts and subcontracts which shall be placed in the sheltered market;
- (d) Contracts and subcontracts for goods and services which shall be placed in the sheltered market;
- (e) The dollar amounts represented by each construction contract (and subcontract) and procurement contract (and subcontract) listed pursuant to paragraphs (c) and (d) of this subsection;
- (f) The percentages of total dollar amounts for both construction and procurement of goods and services represented by the portion of each which shall be placed in the sheltered market program; and
- (g) Dollar amounts and percentages for joint venture contracts shall be adjusted to reflect the proportion of participation by the MBE(s) in each joint venture. Only those portions of contracts which are actually attributable to the minority participant(s) shall be counted toward an agency's program goals.

602.8 In any instance where the percentages of dollar amounts set forth in an agency's fiscal year sheltered market program are less than the goals set forth in this section for either category, the agency shall include a written justification of the difference.

**SOURCE:** Final Rulemaking published at 26 DCR 2771, 2773 (December 21, 1979); as amended by Final Rulemaking published at 30 DCR 5734 (November 4, 1983).

### 603 COMMISSION REVIEW AND APPROVAL OF PROGRAMS

603.1 The Commission shall review each agency's proposed program. As part of its review, the Commission may hold discussions with agency staff and make recommendations for modifications in the agency's proposed program.

603.2 After receipt and review of an agency's proposed sheltered market program, the Commission shall take one of the following actions:

- (a) Approve the program as submitted and notify the agency;
- (b) Approve that portion of the proposed program which is satisfactory and make recommendations for additional placements in the sheltered market or other actions by the agency to improve its program plans; or
- (c) Reject the proposed program as unsatisfactory and make recommendations to the agency for sheltered market placements and other actions.



- 603.3 If an agency's proposed program is either rejected or partially approved, the Commission may require that the agency take additional steps to meet the goals set forth in this section, including, but not limited to, those set forth in §606.

SOURCE: Final Rulemaking published at 26 DCR 2771, 2775 (December 21, 1979).

**604 SHELTERED MARKET PROGRAM IMPLEMENTATION**

- 604.1 The Commission shall establish and maintain a centralized list of certified contractors. The central list shall be used by agencies to identify contracts or classes of contracts for placement in the sheltered market. Appropriate certified contractors on the list shall also receive invitations to bid on open market contracts advertised by each agency.
- 604.2 Where an agency places specific contracts or categories of contracts in the sheltered market, consideration shall be given only to certified contractors.
- 604.3 An agency head may determine, subject to the approval of the Commission, that certain classes of procurements shall not be placed in the sheltered market. Agency heads shall give written notice of each determination to the Commission.
- 604.4 Each agency shall maintain and display in each procurement office bidders mailing lists which indicate the following:
- (a) The name of each contractor doing business with the office; and
  - (b) Those contractors which are certified under the provisions of the Act and chapter 6 and 7 of this title.
- 604.5 Each agency shall also maintain for review by the Commission the following types of procurement lists:
- (a) Small purchase sources;
  - (b) Term contracts;
  - (c) Blanket purchase orders;
  - (d) Repetitive or recurring procurements; and
  - (e) GSA Schedule procurements.
- 604.6 All invitations for bid under the sheltered market shall include the following language:
- This invitation for bid is designated  
for certified minority bidders only,  
under the provisions of D.C. Law 1-  
95, "The Minority Contracting Act of  
1977."**
- 604.7 A copy of the MBE letter of certification shall be attached to the outside cover of each sealed bid.

- 604.8 Invitations to bid in the sheltered market shall be sent to all certified MBE's which qualify under the work classification for which the contract shall be let.
- 604.9 Once an agency has placed a contract in the sheltered market, it shall not be removed by the agency without the approval of the Commission. That approval shall generally be given only upon a showing of the following:
- (a) There are no certified contractors available which are capable of performing the contract; or
  - (b) That at least one attempt to solicit bids for the contract in the sheltered market has failed to produce an acceptable bid.
- 604.10 Any District agency asserting that any bid made by a certified contractor or contractors is excessive shall indicate the reasons for that assertion to the Commission in writing, including an analysis of the following factors:
- (a) Wage determinations;
  - (b) Overhead;
  - (c) Man-hours required for performance;
  - (d) Use of brokers; and
  - (e) Other pertinent data.
- 604.11 Each agency shall submit a quarterly report to the Commission on the status of its sheltered market procurement program, in accordance with the provisions of §7(a)(3) of the Act, on forms to be provided by the Commission.

**SOURCE:** Final Rulemaking published at 26 DCR 2771, 2775 (December 21, 1979).

## **605 SHELTERED MARKET CONTRACTS: PRIORITY CONSIDERATIONS**

- 605.1 In accordance with §2(c) of D.C. Law 4-167, effective March 9, 1983, bids and proposals of certified minority business enterprises and joint ventures shall be evaluated so as to give preference to certain minority business enterprises and joint ventures for the purpose of awarding sheltered market contracts.
- 605.2 The Commission shall accord a preference to a minority business enterprise or joint venture which meets the requirements of §605.3, by reducing by five percent (5%) the bid or price proposal of that minority business enterprise or joint venture, solely for purposes of comparing that bid or price proposal with the bids or price proposals of other certified minority business enterprises or joint ventures.
- 605.3 A minority business enterprise or joint venture shall be eligible for a preference if it is certified by the Commission as having its principal office physically located in the District of Columbia, and either:
- (a) The minority business enterprise or joint venture is licensed pursuant to the general business and professional license law of the District of Columbia, §7 of



"An Act Making Appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30th, 1903, and for other purposes," approved July 1, 1902 (32 *Stat.* 622; D.C. Code, §47-2801 *et seq.* (1981)); or

- (b) The minority business enterprise or joint venture is subject to income and franchise taxes levied under title X of the "District of Columbia Income and Franchise Tax Act of 1947," approved July 16, 1947 (61 *Stat.* 349; D.C. Code, §47-1801.1 *et seq.* (1981)).

**SOURCE:** Final Rulemaking published at 30 DCR 5734, 5735 (November 4, 1983); as amended by Final Rulemaking published at 33 DCR 2490 (April 25, 1986).

## **606 SHELTERED MARKET SUBCONTRACTS**

- 606.1 When an agency's sheltered market program includes placement of subcontracts in the sheltered market by one (1) or more of its prime contractors, those indirect placements shall be made in accordance with the provisions of this section.
- 606.2 Each solicitation for bids on the open market for contracts which include a percentage allocation of subcontracting opportunities to the sheltered market shall include a notice to bidders of the requirement for placement of certain subcontracts (or a percentage of all subcontracts or subcontract value) in the sheltered market.
- 606.3 All bids or offers on prime contracts covered by this section shall include the following:
  - (a) The name of the employee of the offeror or bidder who shall administer the subcontracting program and a description of the duties of the employee;
  - (b) A description of the efforts which the offeror or bidder shall undertake to ensure that certified MBE's will be able to compete for subcontracts or participate in a sheltered MBE subcontracting program; and
  - (c) A proposed plan for implementation of the MBE subcontracting goal or requirement of the prime contract, including a description of the records which will be kept and made available to the agency and Commission to show compliance with the sheltered market program aspect of the contract.
- 606.4 Each solicitation for bids shall state that no contract will be awarded until an acceptable plan is negotiated with the contracting officer and incorporated in the contract. Acceptable plans shall, in the opinion of the contracting officer, provide the maximum practicable opportunity for certified MBE participation in the performance of the contract.
- 606.5 Prime contractors awarded contracts containing MBE subcontractor requirements shall submit quarterly reports to the contracting agency for inclusion in that agency's quarterly report to the Commission. These reports shall be made on forms supplied by the Commission.
- 606.6 If it appears that a prime contractor has not complied with the MBE participation requirements of a contract, the Commission may institute a compliance review investigation. After the investigation, the Commission shall notify the contractor of its

findings and recommendations for corrective measures. If the contractor fails to correct the deficiencies, the Commission may recommend that the contracting agency initiate sanctions or other action for breach of contract against the prime contractor.

SOURCE: Final Rulemaking published at 26 DCR 2771, 2777 (December 21, 1979).

## **607 COMMISSION OVERSIGHT OF PROGRAM IMPLEMENTATION**

- 607.1 If the Commission determines that an agency's proposed sheltered market program is unsatisfactory or that an agency is not fulfilling its commitment under an approved program, the Commission may make specific recommendations to the agency with regard to the agency's program or program implementation.
- 607.2 If the Commission determines that an agency's sheltered market program goal is too low or is not being met, the Commission may require the agency to give at least thirty (30) days advance notice to the Commission of the solicitation of bids on the open market for any contract in the amount of twenty-five thousand dollars (\$25,000) or more.
- 607.3 If the Commission determines that an agency's sheltered market procurement program goal is too low or is not being met, the Commission may require that, prior to the establishment of specifications for any procurement contract in the amount of \$2,000 or more, an agency shall inform the Commission whether the contract will be placed in the sheltered market.
- 607.4 If the agency has not determined whether the contract will be placed in the sheltered market, the Commission may make a recommendation for placement and provide the names of certified contractors to the agency.
- 607.5 If an agency does not place a contract in the sheltered market pursuant to a Commission recommendation under this section, the agency shall provide the Commission with a written explanation for placing the contract in the open market.
- 607.6 If the Commission determines that an agency's sheltered market program goal is too low or is not being met, the Commission may order that a portion of the agency's contracts be reserved for placement in the sheltered market program.
- 607.7 The Commission shall inform the Mayor of all determinations, recommendations, and orders issued pursuant to this section.

SOURCE: Final Rulemaking published at 26 DCR 2771, 2778 (December 21, 1979).

## **608 BONDING**

- 608.1 The Commission shall consider any certified MBE's request for bond waiver on any District of Columbia contract reserved exclusively for the sheltered market as defined in D.C. Code §1-1142(7) (1981).
- 608.2 A certified MBE requesting a bond waiver shall submit an affidavit including the following information:



- (a) History of the certified MBE, which shall contain the following:
  - (1) Records of prior completed contracts, including the extent of the MBE's involvement in each contract;
  - (2) The total value of each contract;
  - (3) The contracting agency, including the names and telephone numbers of agency representatives familiar with each contract;
  - (4) A description of each contract; and
  - (5) The amount of any bond provided, including the name, address, and telephone number of the bonding agent;
- (b) Statement of reasons why the bond should be waived;
- (c) Financial statement of the MBE's assets and liabilities not older than ninety (90) days; and
- (d) Evidence that the contractor has been denied a bond by two (2) surety companies.

608.3 The Commission shall maintain all information provided under §608.2 in confidence and shall return any data submitted by the certified MBE unless it becomes part of a recommendation to the Mayor for bond waiver.

608.4 Upon majority vote of a quorum of the Commission to waive bond on a specific contract, the Staff Director shall prepare and forward to the Mayor through the contracting officer a request for bond waiver stating the reason(s) for the waiver, and the benefits to be derived from waiving the bond.

608.5 The Commission shall not recommend a bond waiver unless in its judgment it is in the best interest of the District of Columbia to do so.

608.6 For a specified contract in excess of one hundred thousand dollars (\$100,000), the Commission may, prior to solicitation of bids, recommend that the requirement for bonding be waived or reduced, and may make such a request to the Mayor through the contracting officer by memorandum providing the basis for the recommendation and the benefit to the District of Columbia from waiving or reducing the bonding requirement.

**SOURCE:** Final Rulemaking published at 33 DCR 5659 (September 12, 1986).

**699 DEFINITIONS**

- 699.1 The definitions of the terms "minority," "minority business enterprise," "local business enterprise," "joint venture," "agency," and "sheltered market," set forth in sec. 3 of the Act are applicable to these rules and incorporated herein by reference.
- 699.2 In addition to the terms under §699.1, when used in this chapter, the following terms and phrases shall have the meanings ascribed:

**Act** - the Minority Contracting Act of 1976, as amended.

**Principal office** - the primary office (based upon the totality of the business activities) in which routine and essential business functions occur such as the following:

- (a) Bookkeeping and other record keeping;
- (b) Payroll maintenance;
- (c) Receipt of business telephone calls;
- (d) Receipt of correspondence;
- (e) Storing of books and records; or
- (f) Directing, controlling and coordinating of activities and policies by officers, principals and managers.

**SOURCE:** Final Rulemaking published at 26 DCR 2771 (December 21, 1979); as amended by Final Rulemaking published at 30 DCR 5734 (November 4, 1983).